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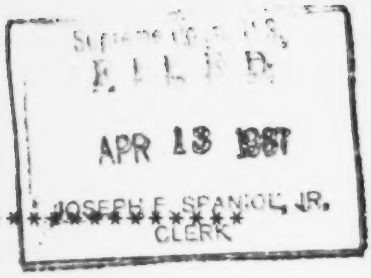

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

****

WILLIAM HAPANIEWSKI, PETITIONER

VS.

CITY OF CHICAGO HEIGHTS, RESPONDENT

****

PETITION FOR A WRIT OF CERTIORARI TO THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT-FIFTH DIVISION

****

WM. HAPANIEWSKI, PRO-SE
1000 East 80th Pl.
Merrillville, Indiana
46410
(219)769-3688

3 1PP

QUESTION PRESENTED

This is a suit seeking damages of 2½ million (½ million times-five counts) from the City of Chicago Heights based upon their actions in destroying the plaintiff's building on July 29, 1977, without notice and in violation of Due Process under the 5th and 14th Amendments to the United States Constitution, and in violation of 42 U.S.C. § 1983, as well as rights under the Illinois statutes and the Illinois Constitutional provisions for Due Process Article 1, §2.

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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and Illinois Constitution Art. 1 Sec. 2

No.

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM HAPANIEWSKI,

Petitioner.

V.

CITY OF CHICAGO HEIGHTS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT-FIFTH DIVISION

The Petitioner, William Hapaniewski, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Court of Appeals of Illinois, First District, Fifth Division, entered in this proceeding on August 23, 1985, because Leave to Appeal to the Illinois Supreme Court had been denied on rehearing on January 13, 1987.

OPINION BELOW

The opinion of the Appellate Court of Illinois First District-Fifth Division, has been reported and cited at 497 N.E. 2d 97, and rehearing for leave to appeal to the Illinois Supreme Court was denied on January 13, 1987.

(see Appendix Exhibit A, B, C, D.)

JURISDICTION TO REVIEW

The petition for Writ of Certiorari is taken pursuant to 28 U.S.C. §1257 (3).

STATEMENT

The building was demolished on July 29, 1977, based upon a void and illegal order from the demolition court of Cook County, an order that violated notice and due process as to the plaintiff-appellant; and this action was brought on April 13, 1981, for damages as a result of the wrongful destruction of the building by the City of Chicago Heights. On March 13, 1984, the trial court dismissed the plaintiff's cause of action, all five counts; and the trial court stated that a 2-year statute of limitations applies to all the counts, and that not the 5-year statute of limitations, and that the 2-year applies even to Federal counts alleging violations of the 5th and 14th amendment, and Section 1983 of the Civil Rights Act, as well as the property recovery rights under the Illinois laws and the Illinois Constitution Art. 1 §2.

Historical background of the case:

The events leading up to the instant action are as follows: Case for Wrongful demolition of the plaintiffs Building.

Sept. 8, 1976 the City of Chicago Heights filed a complaint for demolition against Wm. Hapaniewski.

March 11, 1977 The court ordered a briefing on the defendents motion for trial by jury and set a date and time for said motion for April 22, 1977, at 11:15 A.M.

April 22, 1977 City of Chicago Heights went to a prove up at 9:00 A.M. at an ex-parte trial and obtained an order of demolition.

April 22, 1977 Defendant Hapaniewski appeared in court at 11:15 A.M. and was informed that the case was called and an order for the demolition of the building was obtained by the City.

On April 27, May 24, June 3, July 13, 1977 Wm. Hapaniewski attempted to set aside and vacate the ex-parte order of demolition.

July 29, 1977 City of Chicago Heights demolished the building which was the subject of the demolition suit filed by them.

On October 11, 1979 the Chancery court vacated the order of demolition and this matter was set for discovery,etc..

Sometime herein after February 20, 1980, the entire file in the demolition case was lost for a period of 3 years.

Therefore, this instant action was filed on April 13, 1981.

In June 1981 ,City Chicago Heights, defendant in this cause #81 L8384 moved to dismiss the complaint ; and this was dismissed on March 1984.

The appellant states that a 5 year statute of limitations is the applicable one as to all five counts of his complaint.

The Court of Appeals affirmed the trial court's motion to dismiss on August 23, 1985. Then appellant petitioned for leave to appeal to to the Illinois Supreme Court and was denied this leave to appeal and also denied a rehearing on leave to appeal on January 13, 1987.

AGRUMENT

All actions in this cause happened before the decision of Wilson v. Garcia, 105 S. Ct. 1938, 85 L.Ed2d 254 (1985). All of the action took place in Illinois, and involved Illinois real estate ; and Illinois law prior to the Wilson v. Garcia, is the contended proper law and proper statute of limitations as to the section 1983 count, and that the 5-year statute is the proper limitations as to all other counts. The Illinois Code of Civil Procedure, Ill. Rev. Stat. Ch. 110 § 13-205 states:

§13-205. Five year limitaions. Except as provided in Sections 2-725 of the Uniform Commercial Code, approved July 31, 1961, as amended, and Section 11-13 of the Illinois Public Aid Code, approved April 11, 1967, actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal,or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued.

Additionally, Ill. Rev. Stat. Ch. 83 § 16 provides for five-year statute of limitations for causes that do not have their own prescribed statute of limitations in the category of " all other".

The injury in the complaint was done to a building wherein the building was unlawfully and wrongfully demolished by the City of

Chicago Heights when the City obtained an ex-parte demolition order without giving the plaintiff notice or an opportunity for a hearing. The following Illinois cases state also that a 5-year statute of limitations is the proper one for recovery for injury done to real estate. Illinois National Bank &Trust Co. of Rockford vs. City of Rockford, 406 Ill 11, 92 N.E.2 166. and Monarch Refrigeration Co. vs. City of Chicago, 328 Ill App. 546, 66 N.E. 2d 692, (Public impovement cases). Additionally, in Guarantee Mortgage and Security vs. City of Chicago, 328 Ill. App 276, 65 N.E.2d 632, the court held in this suit for recovery of interest on judgment rendered in a condemnation action that the appropriate statute of limitations was five years. The Federal District Court, in Hamer vs. Anderson 594 F. Supp. 561, held that the 5 years period to the filing of the Hamers' complaint is the relevant time period under Ill. Rev. Stat. Ch. 110, §13-205.

Therefore, the holding that a 2-year statute of limitations applies to injury to property is error and contrary to statute and governing precedence in Illinois cases. The Correct Statute of Limitations applicable to cases for injury to property is 5 years.

Under the current rules the plaintiff has an absolute right to refile his cause if it is filed within the statute of limitations. In this case the demolition happened on July 29, 1977, and this cause was filed on April 13, 1981. This is well within the 5-year statute of limitations. (Ill. Rev. Stat. Ch. 110 Section 13-217).

The Appellate Court erred when it affirmed the Trial Court motion to dismiss the complaint on the 2-year statute of limitations, in this case here in Illinois, and pre Wilson v. Garcia as to the constitutional rights under the 5th and 14th amendments, and the Civil Rights Act Section 1983.

The cases in Illinois in the 7th Federal Circuit as to the statute of limitations for section 1983 cases have determined that the 5 years is the proper statute of limitations. Even though Wilson v. Garcia (1985) has been determined by the Supreme Court of the United States, the 7th Circuit follows the 5-year limitations for cases that happened before Wilson v. Garcia, and that to apply a shorter period of time than what was the Illinois law was deemed to be inequitable. Rovenhagen v. Webber , 493 N.E.2d 374, (Ill. App. 3 Dist. 1986). See also Moore vs. Jackson Park Hosp. 447 N.E.2d 408, Ill. 1983.

In Moore v Floro, 614 F. Supp. 328 (DC Ill. 1985) stated that that court will not apply retroactive the new statute of limitations but shall allow a transition time. Also, that in another Federal district case in Illinois, Shorter v. City of Chicago, 617 F. Supp. 661, (D.C. Ill. 1985)

Based on the above cases it is clear that the 5-year limitation applies to causes of action under the Civil Rights Acts section 1983, for causes prior to 1985 under the ruling in the Wilson v. Garcia , See Garcia v. Rush- Pres- St. Luke Medical Cts. 80 F.R.D. 254, (1978).

The Tort Immunity Act is inapplicable to cause of action where there was a violation of a constitutionally protected right, rather then a mere tort. Firestone v. Fritz, 119 Ill. App. 3rd 685, 75 Ill. Dec. 83, 456 N.E. 2d 904. In the case of Streeter v. County of Winnegago, 44 IL1 App. 3rd 392, 2 Ill Dec. 938, 357 N.E.2d 1371 (1976), the court held that the Tort Immunity Act was inapplicable to a suit for compensation for damages resulting from lawful vacation of a road, since the vacation was within the county's power and the case had no element of tort. And in Luker v. Nelson , 341 F. Supp. 111, 118, (ND ILL. 1972) that court held that section 8-102 of the Tort Immunity Act did not apply to civil rights action §1983.

Furthermore, the Tort Immunity Act does not apply to cases which are brought against a municipality in the nature of a counterclaim. City of Rock Falls v. Chicago Title & Trust Co.. 13 Ill. App. 3rd 359, 364, 300 N.E. 2d 331,(1973) Here in this cause all the above criteria have been the same: The City of Chicago Heights started the demolition, this lawsuit by the plaintiff-appellant is in the nature of a counter claim; the City of Chicago Heights started this by demolition and this action by them was a voluntary action on their part and has no basis in tort; and the City's actions did deprive this petitioner his property rights without due process and in violation of the 5th and 14th amendments under the Federal Constitution, as well as the 42 U.S.C. § 1983 of the Civil Rights Act. Additionally,the due process rights under the Illinois Constitution Art. 1,Section 2, have also been violated. All these rights have the 5-year limitations under Illinois Law.

CONCLUSION

Wherefore, petitioner prays that:
The Judgment of the Court of Appeals of the State of Illinois, First District, Fifth Division should be vacated, and the trial court's order dismissing this cause should be reversed, and that this matter be remanded to the trial call in the Cook County Circuit Court, of Illinois, and all other remedy be provided in this cause as is equitable and proper under the writ of Certiorari.

Respectfully submitted

William Hapaniewski, pro-se

BEST

AVAILABLE COPY

IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT-FIFTH DIVISION

Wm. Hapaniewski, Appellant)
)
vs.) No. 84-902
)
City of Chicago Heights, Appellee)

NOTICE OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Wm. Hapaniewski, the appellant above named, hereby petitions for a writ of certiorari to the Supreme Court of the United States from the final judgment of the Appellate Court of Illinois, First District-Fifth Division, which affirmed the trial court order of March 13, 1984, by its order of August 23, 1985, and after the denial by Illinois Supreme Court on January 13, 1987

Pursuant to 28 U.S.C. §1257 (3)

WILLIAM P. HAPANIEWSKI
ATTORNEY AT LAW
SUITE 421 NORTH
TWIN TOWERS
1000 EAST 80th PLACE
MERRILLVILLE, IN 46410

CERTIFICATE OF SERVICE

tify that on the 13 day of April, 1987
ice of a true and complete copy of the above and going pleading or paper was made upon each party torney of record herein by depositing the same in the ed States mail in envelopes properly addressed to each nem and with sufficient postage affixed.

To:, Lawrence P. Gulotta, Attorney
% Antonietti and Gullotta
1400 Torrence Ave. Suite 201
Calumet City, Ill. 60409

Attorneys for City of Chicago Heights

CERTIFICATE OF SERVICE

I certify that on the 13 day of April, 1987 service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same in the United States mail in envelopes properly addressed to each of them and with sufficient first-class postage affixed.

Wm P Hoganiecki

PROOF OF SERVICE

William P. Hapaniewski, on oath deposes and states that on the 17th day of May, 1987, three copies of the Petition for Writ of Certiorari were served by First Class Mail, postage prepaid, on

Lawrence P. Gullotta, Attorney
% Antonietti and Gullotta
1400 Torrence Ave. Suite 201
Calumet City, Ill. 60409

Wm. P. Hapaniewski

Wm.P. Hapaniewski
Petitioner, Pro Se
1000 East 80th Place
Merrillville, Indiana
46410

(219) 769-3688

Subscribed and Sworn to before me this 17th day of May, 1987.

Notary Public

ANTONIO A. NARANJO, Notary Public
My Commission Expires January 16, 1990.

APPENDIX

APPENDIX "A"

Wm. Hapaniewski, Plaintiff-Appellant,

vs.

City of Chicago Heights, Defendant-Appellee.

No. 84-0902

Appellate Court of Illinois,

First District, Fifth Division.

Aug. 23, 1985

Rehearing Denied Sept. 8, 1986.

PRESIDING JUSTICE MEJDA delivered the opinion of the court:

Plaintiff, William Hapaniewski, appeals from an order of the circuit court dismissing his complaint against defendant, the City of Chicago Heights (City), for failure to bring this action within the two-year limitations period or within one year after plaintiff's voluntary dismissal of a previously filed action. On appeal plaintiff contends that (1) section 2-101 (e) of the Local Governmental and Governmental Employees Immunity Act (Tort Immunity Act)(Ill. Rev. Stat. 1981, Ch. 85, par. 2-101 (e) exempts claims brought under section 1-4-7 of the Illinois Municipal

Code (Code)(Ill. Rev. Stat. 1981, Ch. 24, par. 1-4-7) from the two-year statute of limitations provision of the Tort Immunity Act, (Ill. Rev. Stat. 1981, Ch. 85, par. 8-101) and, therefore, a five-year limitations period applies; (2) the one-year period for refiling plaintiff's earlier action, which was voluntarily dismissed, began to run only after all orders pertaining to the action had been entered; and (3) a five-year statute of limitations applies to all counts of plaintiff's complaint. We affirm.

The events leading up to the instant action are as follows. They arise out of three separate actions brought in the circuit court. Pursuant to an order entered in a chancery action brought by the City on July 29, 1977, the City demolished a building owned by the plaintiff. On September 6, 1979, plaintiff filed a supplemental petition as a cross-claim for wrongful demolition in this chancery action contending that he had not received notice of the demolition proceedings. This supplemental petition was voluntarily dismissed

by the plaintiff on September 26, 1979. Plaintiff later brought an action for wrongful demolition in the law division. He voluntarily dismissed this action on November 19, 1979. The next relevant date is February 20, 1980, when the City's complaint in chancery was dismissed. At that time, the court granted the City leave to file an amended complaint within 30 days and continued the case generally pending any pleadings filed by the parties. On June 13, 1980, plaintiff was denied leave to file an amended supplemental petition in the chancery action for wrongful demolition. The trial court instructed the plaintiff to file an action in the law division.

On April 13, 1981, plaintiff filed the instant action in the law division for wrongful demolition against the City. His second amended complaint sought relief in five counts for wrongful demolition, negligence, deprivation of property without due process of law in violation of both the Federal and State constitutions and section 1983 of the Civil Rights

Act (42 U.S.C.A. §1983 (West 1981)). The City filed a motion to dismiss on the groungs that each count was barred by the two-year statute of limitations period. After a hearing on the motion, the trial court granted the City's motion on March 13, 1984, ruling that the two-year and not the five-year statute of limitations applied to all counts and that the instant action was not refiled within one year of the voluntary dismissal of plaintiff's chancery petition on September 26, 1979. Plaintiff now appeals the trial court's dismissal of this action.

OPINION

Plaintiff's first contention is that section 2-101 (e) of the Tort immunity Act exempts claims filed under section 1-4-7 of the Code from the two-year statute of limitations period of the Tort Immunity Act.

Section 2-101 (e) provides:

"nothing in this Act affects the right to obtain relief other than damages against

a local public entity or public employee. Nothing in this act affects the liability, if any, of a local public entity or public employee, based on:

* * *

e) Section 1-4-7 of the Illinois Municipal Code, approved May 29, 1961, as heretofore or hereafter amended." Ill. Rev. Stat. 1981, ch. 85, par. 2-101(e).

Section 1-4-7- of the Code provides:

"The municipality shall be liable for any injury occasioned by actionable wrong to property by the removal, destruction or vacation, in whole or in part, of any unsafe or unsanitary building, by any municipal officer, board or employee charged with authority to order or execute such removal, destruction or vacation, if such removal, destruction or vacation is pursuant to valid statutes, ordinances or regulations, and if such officer, board or employee has acted in good faith, with reasonable care and probable cause."

Ill. Rev. Stat. 1981, ch. 24, par. 1-4-7. Section 8-101 of the Tort Immunity Act states:

"No civil action may be commenced in any court against a local entity for any injury unless it is commenced within 2 years from the date that the injury was received or the cause of action accrued." Ill. Rev. Stat. 1981, ch. 85, par. 8-101.

In support of his contention, plaintiff argues that because Hecko v. City of Chicago (1975), 25 Ill. App. 3d 572, 323 N.E.2d 595, stands for the proposition that actions brought pursuant to section 1-4-7 are exempted from the notice requirements of the Tort Immunity Act, these actions are also exempted from the two-year statute of limitations provision of the Act. Plaintiff contends, therefore, that a five-year limitations period applies because the subject matter of the complaint is injury to property. (Ill. Rev. Stat. 1981, ch. 110, par. 13-205.) The City maintains that section 2-101 (e) creates an exemption from any pro-

vision of the Tort Immunity Act which would eliminate the "liability" of a public entity from wrongful demolition under section 1-4-7 of the Code. It argues that a statute of limitations affects only the time within which a suit may be filed and not the underlying liability. The exemption from governmental immunity from liability provided in section 2-101 (e), therefore does not affect the two-year statute of limitations period applicable to suits brought under section 1-4-7. We agree.

Statutes of limitations are generally considered to affect the remedy only and not a substative right. (Lambert v. Village of Summit (1982), 104 Ill. App. 3d 1034, 1040, 433 N.E. 2d 1016.) Statutes of limitations affect the remedy by limiting the period within which legal action may be brought or remedies may be enforced; they bar the right to sue for recovery but do not extinguish the underlying obligation. (Fleming v. Yeazel (1942), 379 Ill. 343, 345-46, 40 N.E.2d 507.) Because statutes of limitations generally do

not affect substantive rights, we conclude that the word "liability" used in section 2-101 does not refer to the statute of limitations and, therefore, suits brought under section 1-4-7 are not exempted from the two-year statute of limitations in the Tort Immunity Act.

We disagree with plaintiff's contention that Hecko is controlling. The Hecko court held that the statutory notice requirement of the Tort Immunity Act contained in sections 8-102 and 8-103 do not apply to claims arising under section 1-4-7 of the Code. However, it does not necessarily follow, as plaintiff argues, that the statute of limitations provisions also does not apply to these actions. Because the failure to comply with the notice requirement is a prerequisite to instituting an action against a public entity, the notice requirement is viewed as a substantive rather than a procedural matter. (Schear v. City of Highland Park (1968), 104 Ill. App. 2d 285, 289, 244 N.E. 2d 72.) In contrast, as stated before, the statute of limitations here involved is

procedural in nature and does not affect liability. Because the notice requirement is substantive and affects liability, we find Hecko inapposite.

Plaintiff's second contention is that the one-year period for refiling his earlier chancery action, which was voluntarily dismissed, commenced to run only after all orders pertaining to the action had been entered. Plaintiff initially argues that he had until July 29, 1982, five years after the date of the demolition, within which to file his complaint. If a two-year statute of limitations applies, he contends that the case was not finally dismissed until June 13, 1980, when he was denied leave to file an amended supplemental petition in chancery for wrongful demolition. Thus, his filing of this action on April 13, 1981, was within one year of the dismissal. The City argues that plaintiff had the option of filing either within two years of July 29, 1977, or within one year of either September 26, 1979, when plaintiff voluntarily

dismissed his supplemental petition in chancery or November 19, 1979, when he voluntarily dismissed his first action in the law division.

Section 13-217 of the Code of Civil Procedure states in relevant part:

> " [if] the action is voluntarily dismissed by the plaintiff***, then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff***may commence a new action within one year or within the remaining period of limitation, whichever is greater,***after the action is voluntarily dismissed by the plaintiff***."

Ill. Rev. Stat. 1981, ch. 110, par. 13-217.

We find no merit in plaintiff's contention that the voluntary dismissal was not final until June 13, 1980, merely because the court later entered orders both granting the City leave to file an amended complaint after dismissal and denying plaintiff leave to file an amended supplemental petition. Plaintiff cites no authority and we have not discovered any which

would support his argument. Plaintiff voluntarily dismissed his supplemental petition in chancery on September 26, 1979, and his action in the law division on November 19, 1979. The statutory language clearly states that plaintiff has either within one year of the voluntary dismissal or within the remaining period of limitation to commence a new action. Because the statute of limitations ran on July 29, 1979, plaintiff had until either September 26, 1980, or November 19, 1980, one year after his voluntary dismissals, to refile his action. Plaintiff, however, did not refile until April 13, 1981, well beyond the one-year period.

Plaintiff's third contention is that the remaining counts which are based on the Federal and State constitutions and section 1983 of the Civil Rights Act, derive from the claim arising under section 1-4-7 and the five-year statute of limitations should apply to these counts. We have previously determined that a two-year statute of limitations applies to

actions brought under section 1-4-7. We see no reason to apply a different statute of limitations to the counts alleging constitutional violations than to the count based on section 1-4-7. It is well settled that property interests are not created by constitutional provisions, but rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, rules, or understandings that secure certain benefits, and that support claims or entitlements to those benefits. (Board of Regents v. Roth (1972), 408 U.S. 564, 577, 33 L.Ed. 2d 548, 92 S.Ct. 2701.) Here, the right to sue for damages arises under state law, section 1-4-7. Plaintiff's cause of action, therefore, is subject to the two-year statute of limitations applicable to that statute.

We similarly find no merit in plaintiff's argument that a five-year statute of limitations period applies to claims brought pursuant to section 1983 of the Civil Rights Act. In actions under section 1983, the applicable

statute of limitations is that which the state would apply if the suit had been brought in its courts. (Pegues v. Morehouse Parish School Board (5th Cir. 1980), 632 F. 2d 1279, 1980-81, cert. denied (1981), 451 U.S. 987, 68 L. ED. 2d 844, 101 S. Ct. 2322.) In light of this principle, the proper state limitations period is two years. The word "injury" in section 8-101 includes tortious injury to a person or to his property. (Panko v. County of Cook (1976), 42 Ill. App. 3d 912, 917, 356 N.E. 2d 859.) For these reasons, we find that all five counts are governed by the two-year statute of limitation. Ill. Rev. Stat. 1981, ch. 85, par.8-101.

For the foregoing reasons, we affirm the trial court's granting of the City's motion to dismiss.

AFFIRMED.

SULLIVAN and PINCHAM, JJ., concur.

APPENDIX "B"

letter

From: State of Illinois Supreme Court Clerk

Dated: October 10, 1986

To: Mr. William P. Hapaniewski
830 Mackler Drive
Chicago Heights, Ill. 60411

In Re: Hapaniewski v. City of Chicago Heights
64198

Attn:

This office has received and filed as of October 10, 1986, the following in the above entitled cause:

__X__ Petition for Leave to Appeal.

Please include the Supreme Court case number in all correspondence and documents.

APPENDIX "C"

letter

From: State of Illinois Supreme Court Clerk

Dated: December 4, 1986

To: Mr. William P. Hapaniewski

830 Mackler Drive

Chicago Heights, Ill. 60411

No. 64198 -William Hapaniewski, petitioner

vs.

City of Chicago Heights, respondent

Leave to Appeal, Appellate Court, First Dist.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause. The mandate of this Court will issue to the Appellate Court on December 29, 1986.

APPENDIX "D"

No. 64198

IN THE

SUPREME COURT OF ILLINOIS

William Hapaniewski, Petitioner

vs.

City of Chicago Heights, etc. Respondent

Appeal from
Appellate Court
First District
1-84-0902

ORDER

This matter coming on to be heard upon the motion by petitioner, pro se, for leave to f file a motion for reconsideration of the order denying petition for leave to appeal.

IT IS HEREBY ORDERED that the motion is DENIED.

Filed Jan. 13, 1987, Supreme Court Clerk

Supreme Court, U.S.
FILED
JUN 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1851

In The Supreme Court of the United States

October Term, 1986

WILLIAM HAPANIEWSKI,

Petitioner,

v.

CITY OF CHICAGO HEIGHTS,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

LAWRENCE P. GULOTTA
Attorney of Record
MATTHEW N. LULICH
Of Counsel
ANTONIETTI & GULOTTA
1400 Torrence Ave.
Calumet City, IL 60409
Attorneys for Respondent

Pandick Technologies, Inc., Chicago • (312) 236-0200

QUESTION PRESENTED FOR REVIEW

Petitioner does not state a question which he feels that this Court should review. Based on petitioner's argument, it appears that the question is as follows:

Did the Circuit Court of Cook County, Illinois, as upheld by the Appellate Court of Illinois, err when it applied a two year statute of limitations, pursuant to Illinois statute, to dismiss a suit against a municipality for alleged wrongful demolition of petitioner's building and alleged violation of petitioner's rights under the Constitution of the United States, the Illinois Constitution, and Section 1983 of the Civil Rights Act?

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No. 86-1851

In The
Supreme Court of the United States
October Term, 1986

WILLIAM HAPANIEWSKI,

Petitioner,

v.

CITY OF CHICAGO HEIGHTS,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

JURISDICTIONAL STATEMENT

Respondent denies that the Court has jursidiction to consider this case under 28 U.S.C. sec.1257(3), and this position will be fully explained in respondent's argument.

STATUTORY PROVISIONS

Illinois Revised Statutes, 1977, Chapter 85, Sections 2-101(e) and 8-101, "Local Governmental and Governmental Employees Tort Immunity Act".

2-101. **Construction - Other Relief**

Section 2-101. Nothing in this Act affects the right to obtain relief other than damages against a local public entity or public employee. Nothing in this act affects the liability, if any, of a local public entity or public employee, based on:

(e) Section 1-4-7 of the "Illinois Municipal Code", approved May 29, 1961, as heretofore or hereafter amended.

8-101. **Limitation of Actions**

Section 8-101. No civil action may be commenced in any court against a local entitity for any injury unless it is commenced within 2 years from the date that the injury was received or the cause of action accrued.

Illinois Revised Statutes, 1979, Chapter 24 Section 1-4-7, "Municipal Code of 1961".

Section 1-4-7. **Damages to property by removal, etc., of unsafe or unsanitary buildings–Liability**

The municipality shall be liable for any injury occasioned by actionable wrong to property by the removal, destruction or vacation, in whole or in part, of any unsafe or unsanitary building, by any municipal officer, board or employee charged with authority to order or execute such removal, destruction or vacation, if such removal, destruction or vacation is pursuant to valid statutes, ordinances or regulations, and if such officer, board or employee has acted in good faith, with reasonable care and probable cause.

28 U.S.C. 1257(3). **State courts; appeal; certiorari**

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

Petitioner, plaintiff in the state court, brought his action for wrongful demolition of a building against the respondent, City of Chicago Heights, based on alleged violations of the "Illinois Municipal Code of 1961", Illinois Revised Statutes, 1979, ch. 24, sec. 1-4-7; the Constitution of the United States, the Illinois Constitution, and Section 1983 of the Civil Rights Act.

The Circuit Court of Cook County, the trial court, ruled that such claims brought against a local governmental unit were barred, pursuant to Illinois statutes ("Local Govenmental and Governmental Employees Tort Immunity Act", Illinois Revised Statutes, 1977, ch. 85, sec. 8-101), unless commenced within two years of an alleged injury. Since petitioner filed this case more than two years after demolition of his building, upon motion of the City of Chicago Heights, the Circuit Court dismissed the action. The Appellate Court of Illinois, First District, affirmed the Circuit Court in *Hapeniewski v. City of Chicago Heights*,

147 Ill.App. 3d 528, 497 N.E. 2d 97 on August 23, 1985, and denied rehearing on September 8, 1986. The Illinois Supreme Court denied leave to appeal on December 4, 1986, and also denied leave to file a motion for reconsideration on January 13, 1987.

SUMMARY OF ARGUMENT

The decisions of the courts of the State of Illinois should not be reviewed because this Court has no jurisdiction to hear this case and because petitioner has not so much as alluded to a reason to do so under Rule 17.

ARGUMENT

Petitioner relies upon 28 U.S.C. 1257(3) as grounds for invoking the jurisidiction of this Court. Simply stated, Section 1257(3) indicates that the Court, on Petition for Writ of Certiorari, will only consider "federal questions". It has been the law for a good many years that the application of state statutes of limitations is not a federal question which is reviewable by the Supreme Court.

In *Seneca Nation of Indians v. Christy*, 162 U.S. 283, 16 828 (1896) the Seneca Indians had brought suit for ejectment pursuant to a New York statute. However, the courts of that state had ruled that the suit was not timely filed in accordance with the state law's statute of limitations. The Court held as follows:

> The proper construction of this enabling act, and the time within which an action might be brought and maintained thereunder, it was the province of the state courts to determine. (citations).
>
> The Seneca Nation availed itself of the act in bringing this action, which was subject to the provision, as held by the court of appeals, that it could only be brought and maintained "in the same manner and within the same time as if brought by citizens of this state in relation to their private individual property and rights." Under the circumstances, the fact that the plaintiff was an Indian tribe cannot make federal questions of the correct

> construction of the act and the bar of the statute of limitations.
>
> As it appears that the decision of the court of appeals was rested, in addition to other grounds, upon a distinct and independent ground, not involving any federal question, and sufficient in itself to maintain the judgment, the writ of error falls within the well-settled rule on that subject, and cannot be maintained. (citations). *16 S.C.828 at 830-831.*

Similarly, in the present case, the fact that petitioner claims some violation of federally protected rights, does not make a federal question of whether the state court properly applied the state's statute of limitations. This proposition was also affirmed in *Preston v. City of Chicago*, 226 U.S. 447, 33 S.C.177 (1913), where plaintiff had claimed violation of his federal constitutional rights. The supreme court held that a laches defense, which was applied by the state court, was sufficient to preclude review by the Supreme Court of the alleged federal question. *33 S.C.177 at 178.*

It seems clear that this court does not have jurisdiction to consider this case, and the analyses of whether petitioner meets the burden imposed by Rule 17 seems unnecessary and duplicitous, but it seems that Section 1257(3) and Rule 17 imply a two part test for the court's issuance of writ of certiorari. That is, does federal question jurisdiction exist, and, if so, is it a federal question that will be considered under Rule 17? In this case the analyses of whether a federal question has been presented is really determinative and permeates the discussion of both the court's jurisdiction to hear the case and whether its discretion should be exercised in granting the writ.

Of course, this Honorable Court has wide discretion in granting review on writ of certiorari under Rule 17. However, petitioner has not even attempted to articulate grounds for review under that rule. He does not indicate that the Illinois Supreme Court has rendered a decision

on a federal question which is in conflict with decisions of other state courts of last resort or the federal court of appeals, or that an Illinois court has rendered a decision on a federal question that conflicts with applicable decisions of this Court; nor does he argue that a federal question has been decided at all.

There has been no determination of any question of federal law throughout this case. The courts of Illinois have decided that the period for bringing a suit against an Illinois municipality alleging violations of Illinois statutes, the Illinois Constitution, the United States Constitution, and the Civil Rights Act, is two years from the date of injury.

Petitioner does not contend that the Illinois courts lack authority to decide which limitation periods apply for state law causes of action or federal law causes of action brought in its courts, where no federal statues of limitations are articulated. Such federal law causes of action would be those brought pursuant to Section 1983 of the Civil Rights Act. Petitioner only argues that the Illinois courts have applied the wrong statute of limitations.

Frankly, respondent is befuddled by petitioner's apparent argument that this Court should review the Illinois courts' determination of the limitation period for this case. Petitioner cites several cases which hold that even if this suit were brought in the federal courts, they would seek to apply state statutes of limitations.

> When Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so (citations). In 42 USC Sec.1988 [42 USCS Sec.1988], Congress has implicitly endorsed this approach with respect to claims enforceable under the Reconstruction Civil Rights Acts, *Wilson v. Garcia*, 471 U.S. 261, 85 L.Ed. 2nd 254 at 260 (1985).

While the highest court of Illinois has not ruled on the merits of this case, it did deny leave to appeal the decision of the Illinois Appellate Court which upheld the application of the two year statute of limitations. It is obvious that even the federal courts would defer to the decision of the Illinois courts and apply the two year statute of limitations.

Respondent contends that there is no issue for this Court to review. The Illinois courts have decided questions of Illinois law and it has not been argued by petitioner that the decisions are inconsistent with federal law. This alone should be sufficient to persuade the Court to deny petitioner's request for relief. Mr. Justice Frankfurter articulated just such reasons in *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 94 L.Ed at 565, 566 (1949).

> A variety of considerations underlie denials of the writ, and as to the same petition different reasons may lead different Justices to the same result. This is especially true of petitions for review on writ of certiorari to a State court. Narrowly technical reasons may lead to denials. Review may be sought too late; the judgment of the lower court may not be final; it may not be the judgment of a State court of last resort; the decision may be supportable as a matter of State law, not subject to review by this Court, even though the State court also passed on issues of federal law. A decision may satisfy all these technical requirements and yet may commend itself for review to fewer than four members of the Court.

Finally, petitioner also apparently wishes the Court to consider the merits of whether his federally protected rights have been violated. The Illinois courts have never considered the merits of the case, they have only decided that petitioner did not bring his action in a timely fashion under state law, therefore, the merits of the claim should not be subject to review.

CONCLUSION

It is respectfully submitted that this Court does not have jurisidiction to hear this case, and even if it did, petitioner has not even begun to address his burdens under Rule 17 to invoke review by this Court of the decisions of the Illinois courts. No federal questions have been decided, and, therefore, the decisions of the Illinois courts should not be disturbed.

Respectfully submitted,

ANTONIETTI & GULOTTA
LAWRENCE P. GULOTTA
MATTHEW N. LULICH
Of Counsel
1400 Torrence Ave.
Suite 201
Calumet City, IL 60409
(312) 891–1900